

Legal Issues in Transition Planning
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Arizona's Tenth
Annual Transition Conference
DESIGNING THE FUTURE:
BE ANYONE YOU WANT TO BE

A TALE OF TWO TRANSITION PLANS

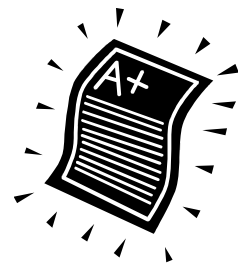
× Cassie's Story

- +The Checklist
- +The Strong Voice
- +Credits vs. IEP Goals
- +Testimony

× Brad's Story

- +The IEP's
- +Spring Meetings
- +Parent's file for DPH
- +Testimony

SHOUT OUTS...



A PRE-TEST

2004 PREDICTIONS... FOCUS ON TRANSITION

- × The focus on transition represents acknowledgement of and continuous efforts to improve the low graduation rates and dismal post-school achievements of students with disabilities (Blackorby & Wagner, 1996)., & Mack, 2002).

HANDWRITING WAS "ON THE WALL"...

- × Prior to reauthorization, confirmation of difficulties evident
- × **President's Commission on Excellence in Special Education (U. S. Department of Education, 2002) Report...**

TRANSITION EXCERPTS:

- ✖ The Commission is appropriately concerned that too many children **fail to move** from school to adult living more successfully...The Commission finds that transition services are not being implemented to the fullest extent possible and that **meaningful results do not happen**. . . The Commission finds that IDEA must be changed to clearly **link** students' long-range transition goals to the development of the annual IEP goals, objectives and activities. . . These changes should redefine transition services as a **results-oriented process** focusing on post-school and in-school results including academic and nonacademic alternatives (p. 46-49).

PURPOSE OF IDEA 2004...

- ✖ Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by having **high expectations** ...in order to "be prepared to lead **productive and independent** adult lives, to the maximum extent possible [20 U.S.C. § 1401(c)(5)(A)]

ACCOUNTABILITY...

- ✖ As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of **accountability** for children with disabilities [20 U.S.C. § 1401 ©(14)].

DEFINITION

- ✖ means a coordinated set of activities for a child with a disability that is designed to be within a **results-oriented process**, that is focused on improving the **academic and functional** achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation...

THE BIG SIX: TRANSITION PLANNING

- ✖ is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes
- ✖ **THE BIG SIX:** instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation [20 U.S.C. § 1402(34)].

FYI: STATE ADVISORY COMMITTEE

- ✖ Must include "not less than 1 representative of a vocational, community, or business organization **concerned** with the provision of transition services to children with disabilities" [20 U.S.C. § 1402(a)(21)(B)].

REQUIRED COMPONENT OF THE IEP

Beginning not later than the first IEP to be in effect when the child is **16**, and updated annually thereafter:

- ✕ appropriate **measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills**
- ✕ the transition services **(including courses of study)** needed to assist the child in reaching those goals; &
- ✕ beginning not later than 1 year...age of majority under State law, a statement [20 U.S.C. § 1414(d)(1)(A)(VIII)].

REQUIRED MEMBERS: IEP TEAM

- ✕ “the public agency must invite a child with a disability to attend the child’s IEP Team meeting if a purpose of the meeting will be the consideration of the **postsecondary goals for the child and the transition services** needed to assist the child in reaching those goals”...

MUST TAKE STEPS...

- ✕ If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child’s preferences and interests are considered...

CONSENT REQUIREMENT

- ✕ To the extent appropriate, **with the consent of the parents** or a child who has reached the age of majority ...the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services [34 C.F.R. § 300.321(b)] .

THE CONSENT REQUIREMENT

- ✕ A new § 300.622(b)(2) has been added to provide that parental consent must be obtained before personally identifiable information is released to officials of participating agencies that provide or pay for transition services.

OSEP LETTERS....

- ✕ Letter to Gray (OSEP, 2008)
 - +districts must seek consent **every time** they wish to invite an agency representative to an IEP meeting.
- ✕ Letter to Capian (OSEP, 2008)
 - +OSEP observed that the parental consent requirement applies even if it is likely that the agency representative will **not** attend the IEP meeting

FAILURE TO MEET TRANSITION OBJECTIVES

- ✖ If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall **reconvene** the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP [20 U.S.C. § 1414 (d)(6)].

FYI: STATE MONITORING

- ✖ "require each State to monitor the local educational agencies located in the State ...using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas: `` (A) Provision of a free appropriate public education in the least restrictive environment. `` (B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and **a system of transition services** ... (C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification" [20 U.S.C. § 1416(a)(3)].

HIGHLIGHTED CHANGE: SOP

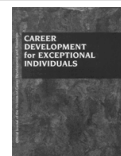
- ✖ The LEA must also provide a **summary of the child's academic and functional performance** when IDEA services are terminated due to graduation or age-eligibility [20 U.S.C. § 1414(c)(5)(B)(ii)].

SUMMARY VS. EVALUATION...

- ✖ IDEA required evaluation prior to change in eligibility with the exception for students who:
 - + Ending their eligibility due to graduation from secondary school with a regular diploma or
 - + Exceeding the age of eligibility for special education under state law.
- ✖ Written Prior Notice Must Be Given

CONCLUSIONS OF OUR STORIES

- | | |
|------------------------|---------------------|
| ✖ Cassie | ✖ Brad |
| +Improper Criteria | + "I" in IDEA & IEP |
| +Inadequate T Plan | +No T Assessment |
| +Violation of P Rights | +Consultants Hired |



LESSONS FROM THE CASE LAW

Etscheidt, S. (2006). Issues in transition planning: Legal Decisions. *Career Development for Exceptional Individuals*, 29(1), 28 – 47.

METHODOLOGY & SAMPLE

- ✖ Purposive sample of 36 published decisions (SEA = 31; DC = 5)
- ✖ Qualitative content analysis (Krippendorff, 2004)
- ✖ S w/ MD (8), LD (5), EBD (4), autism (4), Multiple (4), PH (3), OHI (2), ADHD (2), NS (2)

#1: CONTACT AGENCIES

- ✖ Early!!! Interagency contacts BEFORE graduation (at least by 16!)
- ✖ School District must initiate
- ✖ The IEP must document both the contact and agreed-upon services.

INDEPENDENT SCHOOL DISTRICT NO. 0011,

ANOKA-HENNEPIN, 102 LRP 7054 (SEA MN 2000)

- ✖ 17-year-old male with MD and Down syndrome
- ✖ P claimed no agencies invited. SD claimed P had contacts but didn't share with SD.
- ✖ For P: IEP did not reflect representation of other agencies likely to be responsible for providing and paying for transition services. "Ignorance is not excuse" for failing to invite agencies.

#2: SOLICIT STUDENT INPUT

- ✖ If the student does not attend, the school district must take other steps to ensure that the student's preferences and interests are considered [34 C.F.R. § 300.344(b)(2)]
- ✖ Considering student interests and preferences does not obligate school districts to acquiesce to student-preferred plans, providing the district-proposed transition plan is appropriate.

CARIBOU SCHOOL DEPARTMENT, 35 IDELR 115 (SEA ME 2001)

- ✖ Postgraduate 19-year-old male with ED
- ✖ P = SD did not involve P or S in transition planning. SD = program was adequate because the S graduated from high school.
- ✖ For P: SD did not consider the need for transition and did not involve the or P. The S received no advice or assistance in transition...quote.....

- ✖ This student had been basically set adrift and expected to determine his own needs, assess his own college and career plans, choose his own courses and, from age fourteen on, just when the school's responsibility regarding transition planning begins, be his own advocate. (35 IDELR 118).

MADISON METROPOLITAN SCHOOL DISTRICT, 37 IDELR 26 (SEA WI 2002)

- ✖ Postgraduate male with William's Syndrome
- ✖ P = requested placement in performing arts program since S had expressed interest.
- ✖ SD = S's program of daily living skills, vocational awareness, adaptive behavior goals, & vocational training (on-the-job training, paid employment, & supervised independent housing) appropriate...
- ✖ For SD: IEP had appropriate & beneficial transition plans. S's interests addressed via participation in band & other fine arts services

#3: INDIVIDUALIZE TRANSITION PLANS

- ✖ Avoid "Checklist" Plans
- ✖ Functional vocational assessment ensures individualization of transition plan

EAST PENN SCHOOL DISTRICT V. SCOTT B., 29 IDELR 1058 (ED PA 1999)

- ✖ 20-year-old male with multiple disabilities
- ✖ P = T plan not based on evaluation, contained inadequate services, and included no goals.
- ✖ SD = plan was adequate and addressed vocational education.
- ✖ For P = T plan not individualized for S's unique needs. SD provided only vocational training, which was not based on vocational evaluation.

#4: SCHOOL DISTRICT'S OBLIGATIONS

- ✖ IDEA = LEA responsible for planning, providing and evaluating transition services until S graduates
- ✖ Final IEP must list services to be provided by adult agencies
- ✖ SD must promote or "put students on a path" to independent living but not necessarily achieve that goal.
- ✖ SD not responsible for job placement or post-school success, but appropriate and genuine supports must be provided.

SUSQUEHANNA TOWNSHIP SD V. JELANI J., 39 IDELR 5 (PA COMM. CT., 2003)

- ✖ 19-year-old female with dyslexia, memory disorder, and ADHD
- ✖ P = SD did not provide T service of 1-year postschool program for college prep as specified in the IEP.
- ✖ SD = S met graduation requirements & had opportunity to apply to a postsecondary program.
- ✖ For P = SD failed to provide agreed-upon T services. S must complete the IEP program, as well as earn credits for graduation.

NORTH HUNTERDON-VOORHEES REGIONAL HIGH BD OF ED. 41 IDELA 171 (SEA NJ 2004)

- ✖ 22-year-old male with multiple disabilities
- ✖ P = reimbursement for placement at multiyear transition program
- ✖ SD = had offered reasonable T opportunities [community-based instruction program, summer job program, and guidance counselor].
- ✖ For SD = Transition obligations need not maximize benefit but must offer meaningful benefit "genuine chance to explore options beyond high school.

#5: TRANSITION PLANS MUST BE APPROPRIATE

- ✖ The failure to provide transition services has consistently been viewed as a violation of the substantive requirement of IDEA.
- ✖ Such failure denied students a FAPE and resulted in tuition reimbursement and compensatory education

BD OF ED OF THE ARLINGTON CENTRAL SCHOOL DISTRICT, 36 IDELR 193 (SEA NY 2001)

- ✖ 17-year-old male with OHI
- ✖ SD = appealed decision that the IEP denied FAPE. Failure to develop T plan was “harmless error.”
- ✖ P = enrolled S in a private school & requested tuition reimbursement
- ✖ For P = SD deficiencies in transition planning were substantive violations that denied the student FAPE

HALF-HOLLOW HILLS CENTRAL SCHOOL DISTRICT, 35 IDELR 169 (SEA NY 2001)

- ✖ High-school age male with autism
- ✖ P = IEP failed to specify T needs and services as per IDEA.
- ✖ SD = a variety of transition services had been offered to the student throughout his high-school career.
- ✖ For SD = Formal state of transition services needs missing; but SD offered a “useful” program for success in school, postschool, and independent living

Concerns & Opportunities

THE EMPIRICAL LITERATURE

The focus on transition represents acknowledgement of ...the low graduation rates and **dismal** post-school achievements of students with disabilities (Blackorby & Wagner, 1996)., & Mack, 2002).

- ✖ ~~Achieving the transition~~ mandates of IDEA has been **slow & inconsistent**, evidenced by the difficulties young adults with disabilities face in securing postsecondary success [Johnson et al., 2002].

- ✖ Special education teachers reported that representatives of adult service agencies were **never or rarely** invited to IEP transition meetings [Agran et al., 2002]
- ✖ Special education teachers infrequently interact with adult services providers and are **unfamiliar** with the services offered and referral procedures [Williams & O'Leary, 2001]

- ✖ A significant number of students are not invited to transition meetings [Williams & L'Leary, 2001]
- ✖ Those who do attend are often **passive** participants [Martin et. al., 2004]
- ✖ Students report they are **not prepared** to participate in transition IEP meetings [Zhang, Katsiyannis & Zhang, 2002]

- ✖ Many IEP teams “focus on filling in the transition page of the IEP accurately without regard to the value of this requirement” [deFur, 2003, p. 120]

Expanding the focus beyond procedural compliance ...to improving the quality of students' lives ...will enhance transition planning [McMahan & Baer, 2001]

AN UPDATE ON THE LITIGATION

Cases of Interest

LESSARD V. WILTON-LYNDEBOROUGH COOPERATIVE S.D. [1ST CIR. 2008]

- ✖ P asserted IDEA “raised the bar” for FAPE in definition of transition services
- ✖ Service must result in “actual and substantial progress” toward integrated S's w/ disabilities into society

✖ **1st Circuit refused to defenestrate the Rowley standard for FAPE...**

- ✖ the word "process" denotes a praxis or procedure; it does not imply a substantive standard or a particular measure of progress. The adjectival phrase "outcome-oriented" is similarly agnostic with respect to ultimate results; it specifies the perspective that participants in the process should strive to attain but does not establish a standard for evaluating the fruits of that process...

- ✖ Appellants argue that a specific service -- activities conducted in community settings -- failed adequately to provide educational benefits in an important area of need. In considering the adequacy of a myriad of transition services, an inquiring court must view those services in the aggregate and in light of the child's overall needs. The test is whether the IEP, taken in its entirety, is reasonably calculated to enable the particular child to garner educational benefits. ..

Were the law otherwise, parents could endlessly parse IEPs into highly particularized components and circumvent the general rule that parents cannot unilaterally dictate the content of their child's IEP. ... the IDEA does not require an ideal or optimal IEP, simply an adequate one.

- ✖ [The] IEP incorporated a wide array of other transition services. These included six hours of pre-vocational training each week and regular instruction in specific transition-related skills (such as using a telephone, identifying workers in community settings, maintaining proper self-hygiene, and preparing food). ...[Student's] transition skills were improving

J. L. V. MERCER ISLAND SCHOOL DISTRICT (9TH CIR. 2009)

- ✖ Confirmed reauthorized statute did not raise the *Rowley* basic floor of opportunity standard
- ✖ D.C. ruled that T services to foster independent living and economic self-sufficiency required new standard be adopted

CONGRESS' INTENT...

- ✖ Had Congress sought to change FAPE, it would have expressed clear intent to do so.
- ✖ Congress did not indicate that S / D could not receive FAPE absent attainment of transition goals
- ✖ Congress did not express disagreement with "educational benefit" standard or sought to supersede *Rowley*..."didn't even mention *Rowley*"

BD. OF ED. TOWNSHIP HD DIST. NO. 211 V. ROSS (7TH CIR 2007)

- × Hmmm
- × transition measures should have been discussed in the sophomore IEP
- × her transition plan was "deferred," without explaining authority to take that step
- × District "practice" of deferring the drafting of transition provisions where the student was not ready to move along,

- × D.C. : "reasonable" since S had "not yet progressed to the point at which a transition plan is necessary."
- × Junior IEP: "Transition goals will be determined after [S] completes a vocational assessment & [until then] T planning addressed through IEP goals in the areas of self-help and functional academics.
- × Notes "deferred"

PROCEDURAL FLAW ONLY...

- × What [S] needed "was the very basic skills that were already included in her IEP, and thus that there was no material difference between her transition needs and her current needs.
- × IEP "should have explained this" but was only "procedural flaw" not denying FAPE

7TH CIRCUIT CONCURS...

- × Record showed [S] "not in a position to benefit from an elaborate transition plan including advanced vocational or educational skills" & explains why the SD was deferring a plan with anything more elaborate than what it was already doing & explains why both the HO & DC found this course of action acceptable.

PACE V. BOGALUSA CITY SCH. BD. (5TH CIR. 2003)

- × Individual Transition Plans detailed desired adult outcomes, school action steps, and family action steps for various areas of need such as post-secondary education, employment, living arrangements, homemaking, financial/income, advocacy/legal, community resources, recreation and leisure, transportation, and relationships.

CONTACT SUFFICIENT...

- × Further, Pace's IEP facilitator contacted the Office of Citizens with Developmental Disabilities and the Louisiana Rehabilitation Services Department to assist in providing Pace with transition services.

HIGH V. EXETER TOWNSHIP SCHOOL DISTRICT (ED PA 2010)

- ✱ High School
- ✱ F w/ LD
- ✱ P = T plan deficient - failed to show how S would meet transition goal of attending college.
- ✱ SD = Provided a variety of T services
- ✱ For SD = there is no requirement for a transition plan to dictate IEP goals. Unlike the IEP, a transition plan is not a strictly academic plan, but relates to several post-secondary skills

K. C. V. MANSFIELD ISD (N.D. TX 2009)

- ✱ P: T plan disregarded S's music interest
- ✱ Requested tuition reimbursement for placement in music academy for S with cognitive disabilities

PLAN BASED ON ASSESSMENT

- ✱ Occupational assessment indicated S interest in fashion & child care
- ✱ Also "high interest" in music performance but "very low" skill score
- ✱ SD arranged T plan work in clothing store and aid in elementary school music class

T PLAN APPROPRIATE

- ✱ SD evaluated "skills, interests, and needs" & Tplan incorporated those
- ✱ Program "developed skill areas", "furthered her interests, all while providing her with practical vocational opportunities meant to assist her in her transition from [SD] to post-secondary life.

ROSINSKY V. GREEN BAY AREA SCHOOL DISTRICT (ED WI 2009)

- ✱ High School
- ✱ M w/ Fragile X syndrome
- ✱ P = S failed to make progress toward goal of supported postsecondary employment; needed variety of work settings; no hard progress data
- ✱ SD = Provided a variety of transition services
- ✱ For SD = testimony of WEC, SpED T, and experts (citing requirements from National Transition Center)

EAST HARTFORD BOARD OF EDUCATION (SEA CT. 2008)

- ✱ 21-year-old M w/ Down's syndrome
- ✱ P = T Plan flaws = non-specific/non-measurable goals, unilateral stop of support services, not LRE, no 1:1 supervision, & no independent living or community participation
- ✱ SD = S was too severely disabled for truly integrated community skill training or vocational programs; S now needs adults services
- ✱ For P = T plan doomed to fail; new TP

**VIRGINIA S. V. DEPT. OF ED., STATE OF HAWAII
(D. HAWAII 2007)**

- ✖ Hmmm
- ✖ P or S not “interviewed” for T plan
- ✖ “generic & somewhat vague formula of post-H goals and services, equally applicable to almost any HS student

PROCEDURAL FLAW ONLY...

- ✖ P: S entering 10th grade and need college counseling services; Tplan of great importance.
- ✖ If [S] in 11th or 12th grade the court would be more sympathetic...T plan important to post-secondary objectives, but of greater importance as S nears graduation and post-secondary life....

NOT INDIVIDUALIZED...

- ✖ The court, therefore, will not place undue weight on the role or significance of the transition plan
- ✖ generic goals of high school graduation, attendance at a university or community college, and employment in the community provide a basic framework sufficient... even though the plan was not individualized

MARPLE NEWTOWN SD V. RAFAEL N (ED PA 2007)

- ✖ T Plan does incorporate vocational and independent living skills, the goals are vague and do not capitalize on Student's strengths or specific interests.
- ✖ T Plan contained “generic goals that have remained static from year to year”
- ✖ SD did not provide a meaningful transition plan for Student once he turned sixteen.

**PREPARATION FOR
TRANSITION FROM
SCHOOL**

Begins upon school entry